



DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2023-OSERS-0001]

Proposed Priority and Requirements--Technical Assistance on State Data Collection--National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The Department of Education (Department) proposes a priority and requirements for a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality (Center) under the Technical Assistance on State Data Collection program, Assistance Listing Number 84.373E. The Department may use this priority and these requirements for competitions in fiscal year (FY) 2023 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Part B and Part C of the Individuals with Disabilities Education Act (IDEA). This Center would support States in collecting,

reporting, and determining how to best analyze and use their data to address issues of significant disproportionality and would customize its TA to meet each State's specific needs.

DATES: We must receive your comments on or before [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about the proposed priority and requirements, address them to Richelle Davis, U.S. Department of Education, 400 Maryland Avenue, SW., room 5076, Potomac Center Plaza, Washington, DC 20202-5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue, SW, room 5076, Potomac Center Plaza, Washington, DC 20202-5076. Telephone: (202) 245-7401. Email: Richelle.Davis@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the final priority and requirements, we urge you to clearly identify the specific section of the proposed priority or requirement that each comment addresses.

We are particularly interested in comments about whether the proposed priority or any of the proposed requirements would be challenging for new applicants to

meet and, if so, how the proposed priority or requirements could be revised to address potential challenges.¹

Directed Questions:

1. What are the common challenges or barriers experienced by State educational agencies (SEAs) and local educational agencies (LEAs) when using IDEA data to address significant disproportionality and promote equity, and how could this investment help address those challenges and barriers?

2. What supports do SEAs require in providing for the required review of policies, practices, and procedures in LEAs identified as having significant disproportionality?

3. What supports do SEAs require to assist, as needed, LEAs identified as having significant disproportionality in conducting their root cause analyses to identify the potential causes and contributing factors of the significant disproportionality?

4. What supports do SEAs require to conduct their analysis of significant disproportionality at the State level?

5. What supports do SEAs require to assist, as needed, LEAs identified as having significant disproportionality in expending IDEA funds on comprehensive coordinated early

¹ For additional information on significant disproportionality and associated requirements related to the identification of significant disproportionality, including information on the required review of policies, practices, and procedures, please see Significant Disproportionality Essential Questions and Answers at <https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17.pdf>.

intervening services (CCEIS) to address the causes and contributing factors of the significant disproportionality?

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 to reduce any regulatory burden that might result from the proposed priority and requirements. Please let us know how we could further reduce potential costs or increase potential benefits, while preserving effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing Regulations.gov. You may also inspect the comments in person in room 5076, 550 12th Street, SW, Potomac Center Plaza, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary authority to reserve not more than 1/2 of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Consolidated Appropriations Act, 2023, Public Law 117-328, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to "administer and carry out other services and activities to improve data collection,

coordination, quality, and use under Parts B and C of the IDEA.” Consolidated Appropriations Act, 2023, P. L. 117-328, Div. H, Title III, 136 Stat. 4459, 4891 (2022).

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1418(d), 1442; Consolidated Appropriations Act, 2023, P. L. 117-328, Div. H, Title III, 136 Stat. 4459, 4891 (2022).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Program Regulations: 34 CFR 300.646-300.647, 300.702; as well as IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR) Indicators 9 and 10 regarding disproportionate representation resulting from inappropriate identification, under 20 U.S.C. 1416(a)(3)(C) and 34 CFR 300.600(d)(3); and IDEA Part B SPP/APR Indicator 4 regarding significant discrepancy in suspensions and expulsion rates, under 20 U.S.C. 1416(a)(3)(A) and 1412(a)(22) and 34 CFR 300.600(d)(1) and 300.170.

PROPOSED PRIORITY:

This notice contains one proposed priority.

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality.

Background:

Under sections 616 and 618 of IDEA, States are required to collect, report, analyze, and use data

regarding students with disabilities. These activities are intended support improved educational results and functional outcomes for all children with disabilities, and to ensure that States meet IDEA requirements, with an emphasis on those requirements most closely related to improving educational results for children with disabilities. Additionally, IDEA section 618(d) requires States and the Department of the Interior to collect and examine data to determine if significant disproportionality on the basis of race and ethnicity is occurring in the State and the LEAs of the State with respect to (1) identification of children as children with disabilities, including by disability category; (2) placement of children with disabilities by educational settings; and (3) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. There are 98 separate factors for determining whether significant disproportionality exists in an LEA (i.e., 14 categories of analysis with respect to identification, placement, and disciplinary removal, cross-tabulated with seven racial and ethnic groups).

In December 2016, the Department published a Notice of Final Rule² (NFR) on significant disproportionality in

² The full text of the NFR can be found at <https://www.regulations.gov/document/ED-2015-OSERS-0132-0318>. Please also see Significant Disproportionality Essential Questions and Answers at <https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17.pdf> for additional information on significant disproportionality requirements.

special education to further clarify the statute. The NFR established a standard methodology that SEAs must use to determine whether significant disproportionality on the basis of race and ethnicity is occurring in the State and its LEAs. The NFR also clarified the requirements for the review of policies, practices, and procedures when significant disproportionality is identified, and it requires LEAs to identify the factors contributing to the significant disproportionality and address them, including by reserving 15 percent of their IDEA Part B funds for CCEIS. SEAs were required to begin implementing the regulation by reporting on significant disproportionality beginning in 2020 for the 2018-2019 school year.³

Since that time, the IDEA section 618 data reported by SEAs in the Maintenance of Effort Reduction and Coordinating Early Intervening Services collection (which include the number of LEAs required to reserve 15 percent of their IDEA Part B funds due to being identified as having significant disproportionality)⁴ reflected the following: For school year (SY) 2018-2019 (reported by

³ On July 3, 2018, the Department postponed the date for States to comply with these regulations until July 1, 2020. On March 7, 2019, the United States District Court for the District of Columbia vacated the Department's delay. *Council of Parent Attorneys and Advocates, Inc. v. DeVos*, 365 F. Supp. 3d 28 (D.D.C. 2019). The regulations took effect immediately after that judicial decision.

⁴ An LEA that is identified as having significant disproportionality must reserve 15 percent of its IDEA, Part B funds to provide CCEIS. Please see questions C-3-1 to C-3-10 in Significant Disproportionality Essential Questions and Answers at <https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17.pdf> for more information on CCEIS.

SEAs in May 2020), SEAs reported that 417 LEAs, across 31 States, were required to reserve 15 percent of their IDEA Part B funds due to significant disproportionality. Over the following two school years, the IDEA section 618 data submitted by SEAs reflected an increase in both the number of LEAs identified with significant disproportionality and the overall number of States that identified LEAs. For SY 2020-2021 (the most recent IDEA section 618 data available, reported by SEAs in May 2022), SEAs identified 825 LEAs, across 39 States, with significant disproportionality. While this number represents only 5 percent of all LEAs in the country, it is a significant increase from the number of LEAs identified in SY 2018-2019. Of the 825 LEAs identified in SY 2020-2021, 648 LEAs had not been identified with significant disproportionality in the previous two school years and 99 LEAs had been repeatedly identified in all three reporting years.

The Department's analysis of the above data -- i.e., the simultaneous increase in the number of LEAs identified by the State for the first time and the number of LEAs that have continued to be identified with significant disproportionality -- is that SEAs have varying needs for TA to correctly use their IDEA data to both identify and address significant disproportionality in their LEAs. In particular, SEAs with LEAs that have been identified as having significant disproportionality in multiple years may

require additional TA to assist LEAs in conducting more robust root cause analyses, including using various data to identify and address the factors contributing to the significant disproportionality. In addition, SEAs with LEAs newly identified as having significant disproportionality may require additional TA on how to support LEAs, whether in reviewing their policies, practices, and procedures in the area in which the significant disproportionality was identified, or in conducting a robust root cause analysis to identify and address factors contributing to the significant disproportionality.

Additionally, based on a review of IDEA Part B State Performance Plans and Annual Performance Reports (SPP/APR) submitted by SEAs since 2016, the Office of Special Education Programs (OSEP) has found multiple instances of States confusing the methodologies used to calculate significant disproportionality with those used to calculate data under SPP/APR Indicator 4 (Suspension/Expulsion) and SPP/APR Indicators 9 and 10 (Disproportionate Representation). While there may be some similarities in these data sets and methodologies, the data analysis required for each is different and based on separate, distinct provisions of the IDEA. The significant disproportionality provision in IDEA section 618(d) requires SEAs to determine whether significant

disproportionality on the basis of race and ethnicity is occurring in the State and its LEAs, as it relates to identification, placement, and discipline. In contrast, the reporting under SPP/APR Indicator 4 is based on IDEA section 612(a)(22), which requires SEAs to identify significant discrepancies, including by race and ethnicity, in the rates of long-term suspensions and expulsions of children with disabilities among the LEAs in the State or compared to rates for nondisabled children in those LEAs. SPP/APR Indicator 9 is based on IDEA section 616(a)(3)(C) and requires SEAs to identify LEAs with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. SPP/APR Indicator 10, also based on IDEA section 616(a)(3)(C), requires SEAs to identify LEAs with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification. In addition to providing data that is not valid and reliable to the Department, SEA confusion with implementing the methodologies for significant disproportionality and Indicators 4, 9, and 10, may lead to incorrect identification or non-identification of significant disproportionality, significant discrepancy, and disproportionate representation. OSEP has determined that SEAs, and LEAs through their work with SEAs, require

additional assistance and resources to help them: (1) collect high-quality data and analyze it according to the SEA's standard methodology; (2) understand what their significant disproportionality data mean; (3) conduct root cause analysis of the data to identify the potential causes and contributing factors of the significant disproportionality; (4) evaluate policies, practices, and procedures that may be contributing to the significant disproportionality; and (5) make changes, including through the expenditure of IDEA funds for CCEIS, in any policy, practice, or procedure, and address any other factors, identified as contributing to the significant disproportionality.

To meet the array of complex challenges regarding the collection, reporting, analysis, and use of data by States, OSEP proposes a priority to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality.

Proposed Priority:

The purpose of the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality (Center) is to promote equity by improving State capacity to accurately collect, report, analyze, and use section 618 data to address issues of

significant disproportionality. The Center will also work to increase the capacity of State educational agencies (SEAs), and local educational agencies (LEAs) through their work with SEAs, to use their data to conduct robust root cause analyses and identify evidence-based strategies for effectively using funds reserved for comprehensive coordinated early intervening services (CCEIS).

The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of SEAs to analyze and use their data collected and reported under section 618 of IDEA to accurately identify significant disproportionality in the State and the LEAs of the State;

(b) Increased capacity of SEAs, and LEAs through their work with SEAs, to use data collected and reported under section 618 of IDEA, as well as other available data, to conduct root cause analyses in order to identify the potential causes and contributing factors of an LEA's significant disproportionality;

(c) Improved capacity of SEAs, and LEAs through their work with SEAs, to review and, as necessary, revise policies, practices, and procedures identified as contributing to significant disproportionality, and to address any other factors identified as contributing to the significant disproportionality;

(d) Improved capacity of SEAs to assist LEAs, as needed, in using data to drive decisions related to the use of funds reserved for CCEIS;

(e) Increased capacity of SEAs, and LEAs through their work with SEAs, to use data to address disparities revealed in the data they collect; and

(f) Improved capacity of SEAs, and LEAs through their work with SEAs, to accurately collect, report, analyze, and use data related to significant disproportionality and apply the state methodology for identifying significant disproportionality, including distinguishing data collected under section 616 of the IDEA (SPP/APR Indicator 4 (Suspension/Expulsion) and SPP/APR Indicators 9 and 10 (Disproportionate Representation); and

(g) Increased capacity of SEAs to use data to evaluate their own methodology for identifying significant disproportionality.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will--

(1) Address State challenges in collecting, analyzing, reporting, and using their data collected under

section 618 of IDEA to correctly identify and address significant disproportionality. To meet this requirement the applicant must--

(i) Demonstrate knowledge of IDEA data collections, including data required under sections 616 and 618 of IDEA, as well as the requirements related to significant disproportionality in section 618(d) of IDEA;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs, and LEAs through their work with SEAs, to analyze and use their data collected under section 618 of IDEA to identify and address significant disproportionality;

(iii) Describe how SEAs, and LEAs through their work with SEAs, are currently analyzing and using their data collected under section 618 of IDEA to identify and address significant disproportionality; and

(iv) Present information about the difficulties SEAs, and LEAs through their work with SEAs, have in collecting, reporting, analyzing, and using their IDEA section 618 data to address significant disproportionality; and

(2) Result in improved IDEA data collection, reporting, analysis, and use in identifying and addressing significant disproportionality.

(b) Demonstrate, in the narrative section of the application under "Quality of project services," how the proposed project will--

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will--

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide--

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks:

https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf and www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.

(4) Be based on current research and make use of evidence-based practices (EBPs).⁵ To meet this requirement, the applicant must describe--

(i) The current information on the capacity of SEAs to use IDEA section 618 data to correctly identify significant disproportionality and assist LEAs as they conduct root cause analyses and review LEA policies, practices, and procedures;

(ii) Current research and EBPs on effective practices to address disproportionality, particularly through the provision of CCEIS; and

(iii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe--

⁵ For purposes of these requirements, "evidence-based practices" (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs, and LEAs through their work with SEAs, to collect, report, analyze, and use IDEA section 618 data in a manner that correctly identifies and addresses significant disproportionality in States and LEAs;

(ii) Its proposed approach to universal, general TA,⁶ which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,⁷ which must identify--

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure,

⁶ "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

⁷ "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,⁸ which must identify--

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA level;

(C) Its proposed plan for assisting SEAs to build or enhance training systems related to the use of IDEA section 618 data to correctly identify and address significant disproportionality that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs, and LEAs through their work with SEAs, to collect, report,

⁸ "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

analyze, and use IDEA section 618 data to correctly identify and address significant disproportionality; and

(E) Its proposed plan for collaborating and coordinating with Department-funded projects, including those providing data-related support to States, such as the IDEA Data Center, the Early Childhood Data Center, the Center for IDEA Fiscal Reporting, the Center on the Integration of IDEA Data, the National Center for Systemic Improvement, the EDFacts Initiative, and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe--

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and

implemented by a third-party evaluator.⁹ The evaluation plan must--

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b) (2) (ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available

⁹ A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

annually for the APR and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources," how--

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how--

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe--

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: The project must reallocate unused travel funds no later than the end of the third quarter if the kick-off or planning meetings are conducted virtually.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period; and

Note: The project must reallocate unused travel funds no later than the end of the third quarter of each budget period if the conference is conducted virtually.

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed

project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on

the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority and Requirements

We will announce the final priority and requirements in a document in the *Federal Register*. We will determine the final priority and requirements after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use this proposed priority and one or more of these requirements, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and,

therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We also have reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and

definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated

present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing the proposed priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563. In summary, the potential costs associated with this priority would be minimal, while the potential benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of

implementation will not be excessively burdensome for eligible applicants, including small entities.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Paperwork Reduction Act of 1995

The proposed priority contains information collection requirements that are approved by OMB under OMB control number 1820-0028; the proposed priority does not affect the currently approved data collection.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority easier to understand, including answers to questions such as the following:

- ☐ Are the requirements in the proposed regulations clearly stated?
- ☐ Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- ☐ Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- ☐ Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- ☐ Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- ☐ What else could we do to make the proposed regulations easier to understand?

To send any comments about how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration

(SBA) Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by

receiving a Technical Assistance on State Data Collection program grant. An eligible entity probably would apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Katherine Neas,
Deputy Assistant Secretary.
Delegated the authority to perform
the functions and duties of the
Assistant Secretary for Special
Education and Rehabilitative
Services.

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